U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-C-V-

DATE: OCT. 29, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-918, PETITION FOR U NONIMMIGRANT STATUS

The Petitioner seeks nonimmigrant classification as a victim of certain qualifying criminal activity. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U). The Director, Vermont Service Center, denied the petition. We dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

I. APPLICABLE LAW

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification that:

> (i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --
>
> (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
>
> (II) the alien . . . possesses information concerning criminal activity described in clause (iii);
>
> (III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
>
> (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
>
> . . . .

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: . . . murder; . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

The regulations governing the U nonimmigrant classification at 8 C.F.R. § 214.14(a) provide specific definitions, and state, in pertinent part:

(14) *Victim of qualifying criminal activity* generally means an alien who has suffered direct and proximate harm as a result of the commission of qualifying criminal activity.

(i) The alien spouse, children under 21 years of age and, if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age, will be considered victims of qualifying criminal activity where the direct victim is deceased due to murder or manslaughter, or is incompetent or incapacitated, and therefore unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity. For purposes of determining eligibility under this definition, [U.S. Citizenship and Immigration Services (USCIS)] will consider the age of the victim at the time the qualifying criminal activity occurred.

The eligibility requirements for U nonimmigrant classification are further explained in the regulation at 8 C.F.R. § 214.14, which states, in pertinent part:

(b) *Eligibility.* An alien is eligible for U-1 nonimmigrant status if he or she demonstrates all of the following . . . :

(1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity. . . ;

(2) The alien possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based. The alien must possess specific facts regarding the criminal activity leading a certifying official to determine that the Petitioner has, is, or is likely to provide assistance to the investigation or prosecution of the qualifying criminal activity. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may possess the information regarding a qualifying crime. In addition, if the alien is incapacitated or incompetent, a parent, guardian, or next friend may possess the information regarding the qualifying crime;

(3) The alien has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initiation of cooperation, has not refused or failed to provide information and assistance reasonably requested. In the event that the alien has not yet reached 16 years of age on the date on which an act constituting an element of the qualifying criminal activity first occurred, a parent, guardian or next friend of the alien may

> provide the required assistance. In addition, if the Petitioner is incapacitated or incompetent and, therefore, unable to be helpful in the investigation or prosecution of the qualifying criminal activity, a parent, guardian, or next friend may provide the required assistance[.]

In addition, the regulation at 8 C.F.R. § 214.14(c)(4) prescribes the evidentiary standards and burden of proof in these proceedings:

> The burden shall be on the Petitioner to demonstrate eligibility for U-1 nonimmigrant status. The Petitioner may submit any credible evidence relating to his or her Form I-918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I-918 and may investigate any aspect of the petition. Evidence previously submitted for this or other immigration benefit or relief may be used by USCIS in evaluating the eligibility of a Petitioner for U-1 nonimmigrant status. However, USCIS will not be bound by its previous factual determinations. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including Form I-918, Supplement B, "U Nonimmigrant Status Certification."

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of El Salvador who last entered the United States without inspection on December 25, 1995. The Petitioner filed the instant Form I-918, Petition for U Nonimmigrant Status, with an accompanying Form I-918 Supplement B, U Nonimmigrant Status Certification, on February 9, 2010. The Petitioner also filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The Director subsequently issued a request for evidence (RFE) for, among other documents, evidence that the Petitioner was the victim of a qualifying criminal activity. The Petitioner timely responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. Accordingly, the Director denied the Form I-918 and the Form I-192. The Petitioner timely appealed the denial of the Form I-918 which we summarily dismissed and the matter is now before us on motion.

We conduct review on a *de novo* basis. Based on a full review of the evidence in the record, and the evidence on motion, the Petitioner has not overcome the Director's decision to deny the Petitioner's Form I-918.

III. CERTIFIED CRIMINAL ACTIVITY

The Petitioner asserts that he was a witness to the murder of N-F-,[1] an individual unrelated to the Petitioner. The Form I-918 Supplement B was signed by , Director, Victims' Rights Division, District Attorney's Office, Texas, on January 22, 2010. The Form I-918 Supplement B listed the criminal activity of which the Petitioner was a victim at Part 3.1 as "Murder." In Part 3.3, the certifying official cited Texas Penal Code (Tex. Penal Code Ann.) § 19.02 (murder) as the criminal activity that was investigated or prosecuted.

[1] Name withheld to protect individual's identity.

At Part 3.5, the certifying official indicated that the Petitioner was present when the defendants admitted involvement in the murder of N-F-.

IV. NOT A VICTIM OF QUALIFYING CRIMINAL ACTIVITY

The Petitioner asserts that USCIS approved a nonimmigrant U petition that had been filed by another petitioner involving the same murder victim and factual circumstances. The record of proceeding does not contain copies of the Form I-918 that the Petitioner claims was previously approved. Further, each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The relevant evidence submitted below and on motion does not establish that the Petitioner meets the regulatory definition of victim. On motion, the Petitioner asserts that he qualifies as a victim because he assisted in the conviction of the perpetrators of N-F-'s murder and is fearful of the perpetrators. However, in cases where the direct victim was murdered, the regulation only includes as indirect victims the spouse, and children under 21 years of age, and if the direct victim is under 21 years of age, parents and unmarried siblings under 18 years of age. 8 C.F.R. § 214.14(a)(14)(i). The indirect victim definition does not extend beyond the specified family members. In this case, the Petitioner did not have a qualifying relationship with N-F- as defined under 8 C.F.R. § 214.14(a)(14)(i), and, therefore, would not qualify as an indirect victim of the criminal activity.

The Petitioner indicated in his affidavit that although he was not a direct victim of the murder, he suffered direct or proximate harm as a result of the murder. He further stated that he developed serious psychological and health problems as a result of his testimony against the perpetrators. The regulatory definition of victim was drawn in large part from the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). *See U Nonimmigrant Status Interim Rule*, 72 Fed. Reg. 53014, 53016 (Sept. 17, 2007) (citing the AG Guidelines as an informative resource in the rule's definition of victim). The AG Guidelines clarify that "direct and proximate harm" means that "the harm must generally be a 'but for' consequence of the conduct that constitutes the crime" and that the "harm must have been a reasonably foreseeable result" of the crime. *Attorney General Guidelines for Victim and Witness Assistance*, 2011 Edition (Rev. May 2012), at 8-9. In assessing harm to the victim, the AG Guidelines further explain that: "In the absence of physical . . . harm, emotional harm may be presumed in violent crime cases where the individual was actually present during a crime of violence." *Id.* at 9.

In its Preamble to the U visa rule, USCIS stated:

> The AG Guidelines also state that individuals whose injuries arise only indirectly from an offense are not generally entitled to rights or services as victims. AG Guidelines at 10. The AG Guidelines, however, provide DOJ personnel discretion to treat as victims bystanders who suffer unusually direct injuries as victims. USCIS . . . will exercise its discretion on a case-by-case basis to treat bystanders as victims where that bystander suffers an unusually direct injury as a result of a qualifying crime[.]

72 Fed. Reg. 53014, 53016 (Sept. 17, 2007). Accordingly, there may be circumstances in which a bystander to a qualifying crime would suffer "unusually direct injuries" as a result of witnessing a violent crime.

The Petitioner submitted a psychosocial evaluation from a licensed professional counselor and licensed marriage and family therapist, stating that the Petitioner was not present at the time of N-F's murder, but later found out about the murder from a perpetrator of the murder. The Petitioner's letter from a licensed professional counselor, provides a similar account. Although we recognize that the Petitioner indicates that he is depressed and has severe anxiety and suffers from diabetes and hypertension as a result of his fear of the perpetrators, the evidence shows that he was not present at the time N-F- was murdered. Accordingly, the Petitioner has not demonstrated that he can be considered a victim under the regulation at 8 C.F.R. § 214.14(a)(14) as a bystander who suffered an unusually direct injury as a result of witnessing the crime committed against N-F-. Although we acknowledge the assistance that the Petitioner gave to the prosecutors and are sympathetic to the particular facts and the difficult time the Petitioner and his family have had as a result of his cooperation with law enforcement, the evidence does not establish that he was the victim of a qualifying crime or criminal activity, as required by section 101(a)(15)(U)(i) of the Act.

V. CONCLUSION

The Petitioner has not established that he was the victim of criminal activity, as required by section 101(a)(15)(U)(i)(I) of the Act. We therefore do not make any additional finding regarding the Director's inadmissibility determination. The Petitioner is ineligible for U nonimmigrant classification and his petition must remain denied.

As in all visa petition proceedings, the Petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the motion will be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of R-A-C-V-*, ID# 15025 (AAO Oct. 29, 2015)